

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

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DEBRA P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

TOMMY STRICKLAND

PETITIONER

VS.

**CASE NO. 2:07CV1052-mht
(TO BE SUPPLIED BY CLERK)**

WARDEN RALPH HOOKS

RESPONDENT

=====}

PETITION FOR WRIT OF HABEAS CORPUS

**Comes now Tommy Strickland and petitions the Honorable
Court to issue the writ upon Warden Ralph Hooks, and to Attorney
General Troy King. Strickland shows the following:**

- 1. Strickland has exhausted all State Court remedies available by Alabama State laws.**
- 2. The last State Court denial was done by Alabama Supreme Court.**

On November 9th, 2007, Certificate of Judgment was entered, Writ

denied. Case number 1070107, copy attached. Exhibit # 1.

3. Strickland was sentence and convicted from Elmore County, Alabama. Elmore County, Alabama is located in the Middle District for jurisdiction, and venue of this Writ to issue.

PROCEDURAL HISTORY OF CASE AND FACTS

1. Strickland was convicted of the charge of Promoting Prison Contraband Second Degree; in the Circuit Court of Elmore County, Alabama, on March 4th, 1986. There was no direct appeal taken.

2. On January 22, 2007 Strickland filed a Rule 32 petition challenging His conviction. The Circuit Court summarily dismissed the petition. Facts are Strickland was sentenced under Section 13A-5-9, Code Of Alabama 1975 HFOA [Habitual Felony Offender Act].

3. Strickland filed a timely appeal to the Alabama Criminal Court of Appeals. The Court of Criminal Appeals affirmed the Circuit Court dismissal on September 21, 2007. A application for rehearing was filed on and about September 30, 2007, and Overruled on October 12,2007.

4. Strickland then filed a Writ Of Certiorari to Alabama Supreme Court, which was denied November 9th, 2007.

GROUND FOR WRIT OF HABEAS CORPUS

**GROUND I. VIOLATION OF STATE STATUTE IMPOSING
SENTENCE ORDERED TO BE SERVED CONSECUTIVE &
CONCURRENT VIOLATED STRICKLAND'S 8th & 14th U.S.
CONSTITUTIONAL RIGHTS**

1. The trial Court in Elmore Circuit Court imposed a sentence order for Strickland to serve 10 years of His conviction to Promoting Prison Contraband concurrent with another sentence already being served. On March 4, 1986, the guilty plea sentence was enforced.
2. The Conviction report delivered to Alabama Department Of Corrections, was done in two conviction seperate sentence orders. The State Of Alabama by Court's orders imposed required for Strickland to serve two convictions for the one single crime by Statute.
3. The Court on March 4, 1986 sentenced Strickland to serve 5 years for promoting prison contraband consecutive to another sentence.

4. Alabama Department Of Corrections placed Strickland under two convictions to be served from one single sentence from Elmore Circuit Court.

**GROUND ONE: U.S. CONSTITUTIONAL 8th & 14th
AMENDMENTS VIOLATIONS**

- 1. Strickland filed a proper Writ Of Certiorari before the Alabama Supreme Court. Strickland showed facts and Alabama law to which State Court failed to address and honor in Alabama Courts for a Pro Se inmate untrained in law.**
- 2. Alabama Supreme Court denied Strickland review of U.S. Constitutional violations which are plain by Alabama Statute. Code Of Alabama 1975 Section 14-3-38(a).**
- 3. Strickland was denied proper and fair review by Alabama Criminal Court of Appeals of the U. S. Constitution. The State of Alabama did not address the serious issues which were presented that made Strickland serve two convictions by full illegal acts.**
- 4. Strickland has been denied review by Alabama Supreme Court to:**

(1). Conflict which exist by Alabama Statute, Code Of Alabama 1975 section 14-3-38(a). Alabama Legislative Intent, and plain well understood language, which says: "there can be only [O]ne sentence imposed by a [F]ixed order of the Court. Concurrent or Consecutive."

The United States Constitution forbids excessive punishment. State of Alabama waived answering the merits of Strickland's brief, and well understood facts. United States Constitution issues must be resolved for the sentence by plain language of Statute.

(2). Strickland's factual basis showing that there were two convictions which were imposed was not resolved. Strickland having to serve two seperate convictions for one single crime, per conviction is cruel and unusal punishment, in direct violation of United States Constitution.

(3). Strickland's calims that the very case cited by State of Alabama conflicts with the Statute's plain language. The United States Constitution is being violated by State's failure to honor their written laws as to how a legal sentence [M]ust be served.

II. HABITUAL OFFENDER PLAIN LANGUAGE
STATE FAILS TO HONOR APPLICATION OF THEIR
LAWS AS WRITTEN FOR EQUAL PROTECTION

1. The unrefuted facts to which Strickland has raised has not been refuted by State Court. Alabama laws says unrefuted facts must be taken as true.

2. Code Of Alabama 1975 Section 13A-5-9, specifically requires that before any person can be sentence as a Habitual Offender it [M]ust be shown before the Court. Alabama has twisted the language of the Statute for denial of 14th Amendment rights. The argument remains unrefuted to this day:

(1). In all cases when it is shown, Alabama makes it mandatory by the Statutory construction of the very words [S]hall and [M]ust, that before the Court can have jurisdiction to sentence under any enhancement it must be placed in the records, and shown before the Court.

(2). Strickland's U.S. Constitutional rights exist for State to issue a full set of facts refuting the specific claims as presented. Without the

mandatory provisions being applied the Court loose jurisdiction.

Therefore the ruling by the Court of Criminal appeals is contrary to plain language in Alabama Statute for sentencing.

**III. THE CONFLICT WITH UNITED STATES SUPREME
COURT LAW, AND UNITED STATES CONSTITUTION
8th AND 14th AMENDMENT RIGHTS**

1. Strickland cited BALL V. UNITED STATES, 470 U.S. The illegal sentence must be address and resolved where Strickland can't be made to serve two convictions for one single crime, a Class C felony.
2. The United States Constitutional violations were not address by any State Court, and the illegal sentence is a clear 8th Amendment violation done knowingly, and with bad faith.

RELIEF WHICH EXIST

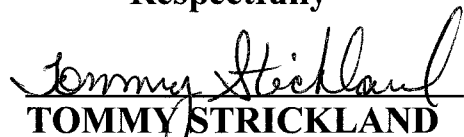
1. Strickland has issues which must be resolved that U.S. Constitution requires a full answer to. State Court treated Strickland's claims to lightly where the issues are not a mere question of how

State law is applied. Strickland has been order to serve his sentence by excessive punishment unauthorized by Statute.

2. Strickland has claims which grants relief under 28 USC Section 2254. Where State Court has not ruled to any facts presented.

3. Strickland request service of the writ upon Respondents, and the Courts order for a full answer and all documents be presented for sentence, conviction reports, time sheets, and calculation of any CIT Good Time.

Respectfully


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DATED THIS NOVEMBER 19, 2007